



April 5, 2000

Mr. Dick H. Gregg, Jr.
City Attorney
City of Seabrook
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2000-1299

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133737.

The City of Seabrook (the "city"), which you represent, received a request for three categories of information dealing with communications between city employees or officials and Port of Houston commissioners, managers or attorneys. You indicate that most of the responsive information has been or will be released, but that you seek to withhold certain other responsive information, which you describe as "the attorney's work in progress, the attorneys notes, and day planner and e mails or memos to the attorneys for the Port seeking changes or to council with advice and comment." You have submitted information to this office for review. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. You also assert that responsive information may be withheld as attorney work-product or as protected by the attorney client privilege. Such information may be excepted from public disclosure by section 552.107 of the Government Code. We have considered the exceptions you raise and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c). In this case you state, "the applicant is the lawyer for the litigants in a

have not demonstrated that Government Code section 552.103 excepts any of the responsive information from public disclosure. *Texas Legal Found.*, 958 S.W.2d at 483 (“Ordinarily, the words ‘related to’ mean ‘pertaining to,’ ‘associated with’ or ‘connected with.’”).

Section 552.111 of the Government Code excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 43 Tex. Sup. Ct. J. 303 (Jan. 13, 2000), 2000 WL 21029 (Tex. Jan. 13, 2000). An agency’s policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information about such matters does not inhibit free discussion of policy issues among agency personnel. Open Records Decision No. 613 (1993). An agency’s policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body’s policy mission. See Open Records Decision No. 631 (1995). In addition, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld under section 552.111. Open Records Decision No. 313 (1982). We have examined the submitted information and believe that most of it may be withheld under section 552.111. The remaining portion may not. Open Records Decision No. 561 at 9 (1990) (privity of interest or common deliberative process must exist for section 552.111 to apply for communications between entities), 474 at 2-3 (1987) (communications between agencies and other third parties not protected by section 552.111). We have marked the documents to indicate that portion which may be withheld under section 552.111.

You also claim that the information may be protected as attorney work product or under the attorney-client privilege under section 552.107. We do not believe that in this instance the documents not already protected by section 552.111 would be protected by section 552.107 or as attorney work product. Tex. R. Evid. 503(a)(5); Open Records Decision Nos. 658 at 7 (1998) (information provided to opposing party not a “confidential communication” protected by the attorney-client privilege), 647 (1996) (attorney work product), 630 (1994); 349 (1982) (once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information), 320 (1982).. Consequently, you must release the remaining documents not marked for protection under section 552.111.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

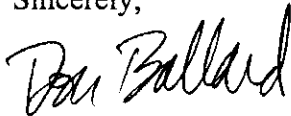
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Don Ballard
Assistant Attorney General
Deputy Chief, Open Records Division

JDB/MJB/ljp

Ref: ID# 133737

Encl. Marked documents

cc: Mr. Harvill E. Weller
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(w/o enclosures)